

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

DAMEN D. RABB,

Plaintiff,

v.

CABRERA, *et al.*,

Defendants.

Case No. 1:23-cv-01014-KES-BAM (PC)

ORDER GRANTING PLAINTIFF’S MOTION
FOR EXTENSION OF TIME FOR DEPOSITION
(ECF No. 44)

ORDER GRANTING DEFENDANT’S
REQUEST TO MODIFY SCHEDULING ORDER
TO EXTEND DISCOVERY AND DISPOSITIVE
MOTION DEADLINE
(ECF No. 46)

Discovery Deadline: **June 6, 2025**

Dispositive Motion Deadline: **August 15, 2025**

Plaintiff Damen D. Rabb (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff’s first amended complaint against Defendant Cabrera (“Defendant”) for failure to protect in violation of the Eighth Amendment.

Pursuant to the Court’s August 7, 2024 discovery and scheduling order, and February 6, 2025 order granting Defendant’s motion to modify scheduling order, the deadline for completion of discovery is May 7, 2025, and the deadline for filing all dispositive motions (other than a motion for summary judgment for failure to exhaust) is July 16, 2025. (ECF Nos. 39, 43.)

On March 7, 2025, Plaintiff filed a motion for a thirty-day extension of time to prepare for his deposition, currently noticed for April 2, 2025. (ECF No. 44.) Plaintiff stated that he has other engagements scheduled on April 2, 2025, in addition to needing the additional thirty days to gather documentation needed during the deposition itself. (*Id.*) The Court directed Defendant to file a response addressing whether there is any opposition to Plaintiff’s request, whether Plaintiff’s deposition can be rescheduled to another date that is amenable to both parties, and

1 whether any further extension of the discovery and dispositive motion deadlines is necessary in
2 light of Plaintiff's request. (ECF No. 45.) Defendant was encouraged to attempt to meet and
3 confer with Plaintiff as necessary and appropriate. (*Id.*)

4 Currently before the Court is Defendant's response, filed March 24, 2025. (ECF No. 46.)
5 Despite diligent attempts to meet and confer with Plaintiff, defense counsel was unable to do so
6 because Plaintiff refused to speak to Defendant's counsel. Counsel was advised by the Litigation
7 Coordinator at Plaintiff's institution that it is difficult to ensure Plaintiff's attendance at
8 appointments such as depositions because Plaintiff refuses to come out of his cell. Defense
9 counsel notes that a previous matter before this Court was terminated due to Plaintiff's refusal to
10 attend a deposition until compelled to do so, refusal to answer questions at a second deposition,
11 and refusal to participate in a third deposition. *See Rabb v. Figueroa*, Case 1:23-cv-00843-JLT-
12 SAB (E.D. Cal.). Defense counsel ascertained that Plaintiff's institution is able to accommodate
13 a deposition on May 5, which is the closest available date to the thirty-day extension requested by
14 Plaintiff. If the Court approves, counsel will re-notice Plaintiff's deposition for this date.
15 Further, Defendant requests that the Court extend the discovery and dispositive motion deadlines
16 in this case by thirty days to allow sufficient time to analyze Plaintiff's deposition transcript and
17 related materials and prepare a motion for summary judgment, if appropriate. (ECF No. 46.)

18 Plaintiff has not yet had an opportunity to file a reply brief, but the Court finds further
19 briefing is unnecessary. The motion is deemed submitted. Local Rule 230(1).

20 Having considered Plaintiff's motion and Defendant's non-opposition, the Court finds it
21 appropriate to grant Plaintiff an extension of time to prepare for his deposition. The Court further
22 finds that Plaintiff may not claim prejudice by Defendant's selection of May 5, 2025 as the new
23 deposition date, in light of Plaintiff's refusal to meet and confer with defense counsel regarding a
24 mutually agreeable date.

25 Furthermore, the Court finds good cause to grant the requested modification of the
26 scheduling order. Fed. R. Civ. P. 16(b)(4). The Court further finds that Plaintiff will not be
27 prejudiced by the brief extensions granted here, as the extension of these deadlines allows for
28 Plaintiff's requested extension of time to conduct Plaintiff's deposition.

Plaintiff is warned that if he fails to appear for or participate meaningfully in his deposition, he may be subject to sanctions, up to and including terminating sanctions.

Plaintiff is reminded that depositions are governed by Federal Rule of Civil Procedure 30, which states in pertinent part that “[a] party may, by oral questions, depose any person, including a party, without leave of court” Fed. R. Civ. P. 30(a)(1). A failure to participate in discovery is in violation of Fed. R. Civ. P. 30 and 37. Under Rule 30(d)(2), the Court may impose sanctions for impeding, delaying, or frustrating the fair examination of the deponent.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff’s motion for extension of time for deposition, (ECF No. 44), is GRANTED;
2. Plaintiff’s deposition SHALL be re-noticed for May 5, 2025, and Plaintiff SHALL appear for a video deposition on May 5, 2025, as discussed above;
3. Defendant’s request to modify the scheduling order, (ECF No. 46), is GRANTED, as follows:
 - a. The deadline for completion of all discovery, including filing all motions to compel discovery, is extended from May 7, 2025 to **June 6, 2025**; and
 - b. The deadline for filing all dispositive motions (other than a motion for summary judgment for failure to exhaust) is extended from July 16, 2025 to **August 15, 2025**; and
4. **A request for an extension of a deadline set in this order must be filed on or before the expiration of the deadline in question and will only be granted on a showing of good cause.**
5. **Plaintiff is warned that if he fails to appear for or participate meaningfully in his deposition, he may be subject to sanctions, up to and including terminating sanctions.**

IT IS SO ORDERED.

Dated: March 25, 2025

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE